

OPEN SPACE COUNCIL
MINUTES
Legislative Hall
Senate Hearing Room, Second Floor
Dover, DE
December 12, 2008
9:00 a.m.

ATTENDANCE

Council Members:

Lynn W. Williams, Chairperson
Paul Boswell
Harvey Marvel
John Schroeder
William Powers, Jr.

Advisory to:

John Hughes (not present)

Ex-Officio:

Charles A. Salkin, Parks & Recreation, DNREC

Guests:

Nick DiPasquale
Heather Kenton, DEDO
Marlene Mervine, NRWC
Warren Reynolds
Michael Scuse, Governor's Office
Timothy Slavin, State, Historical & Cultural Affairs

Staff:

Robert Ehemann, Parks & Recreation, DNREC
Robert Phillips, DAG, DOJ
Austin Short, DDA
Ron Vickers, Parks & Recreation, DNREC
Patrick Emory, Fish & Wildlife, DNREC
Matt Chessier, Parks & Recreation, DNREC

I. Call to Order/Announcements

Mrs. Lynn Williams, Chairperson, called the regular Open Space Council meeting to order at 9:10 am. She welcomed Council members, visitors, and staff and asked for announcements. There being none, the meeting proceeded.

II. Review of Minutes of the September 9, 2008 Meeting

Mrs. Williams asked for corrections to the September 9, 2008 minutes. Hearing none, she asked for a motion to approve the minutes. Council moved and seconded to accept the minutes as written. Mrs. Williams noted to Council an article in The Nature Conservancy newsletter about the Okie family and the donation of their land to TNC and then the subsequent transfer to the State. This is the Poplar Thicket- Okie property located on the north side of the Indian River at Long Neck.

III. Financial Report

Mrs. Williams said she received a letter from the State Budget Office stating it will be reviewing the Open Space Program funds. With the current budget shortfall all program funds are being scrutinized. There is the potential to lose some funding.

Mr. Salkin explained that the previously approved projects and the 3 projects for executive session at this meeting would use all of the current Open Space Program funds in hand plus the FY 2009 funds of \$5.1 million available on June 30, 2009, plus the anticipated \$3.0 million federal reimbursement from the CELCP program. In order for the Department to continue negotiating in good faith and honor all executed contracts, it must advise the Budget Office that it needs a decision soon on the status of current and anticipated funds. After today's meeting Secretary Hughes will send a letter to the Budget Office detailing the program's concerns and explaining that any future requests should come to the Department as opposed to the Council since the Department signs the contracts and commits the funds. It is appreciated that the Budget Office keeps the Council informed. Additionally, the letter will detail the status of all the projects with signed contracts and pending contracts. It will set forth a timeline for the funding needs. It will also state that all of the land managing agencies are not negotiating any new projects and anticipate little or no funding for FY10. The letter will request that the Budget Office release all funds and allow the Department to proceed with all of the projects.

Mrs. Williams reminded Council that the Budget Office did take back part of last year's funding and interest, totaling \$475,000. She advised that we need to clearly justify the need to maintain our current funds.

Mr. Salkin pointed out that the Budget Office had not suggested that they would be 'taking' the funds from us. Instead they asked each agency to put a hold on certain funds until decisions were made about how to balance this year's budget and until preliminary decisions are made about cuts for next year's budget. At this point the Department expects to meet its obligations for budget cuts for the current fiscal year without impacting the Open Space Program. Our hope is that once this has been accomplished and approved, then the Open Space dollars would be available for use.

Mr. Vickers presented the financial report. The amount of remaining Realty Transfer Tax funds for FY2009 that were received on June 30, 2008 is \$7,023,027.70. We are still anticipating \$5.1 million for FY2009 which would be available on June 30, 2009. Typically, the program receives \$9 million at the end of each fiscal year. But the Bond Bill for FY2009 reduced it to \$5.1 million. This represents a 43% reduction from the normal funding. The Open Space Program is still

anticipating the federal reimbursement related to the Coastal and Estuarine Land Conservation Program (CELCP) for \$2,997,000.00. The Budget Office cannot take this money away because these are federal funds coming in as a grant and are restricted in their use. Total funds available for FY2009 are \$15,120,027.70. There are eight previously approved projects which amount to \$12,040,001.00, leaving a balance available, through June 30, 2010, of \$3,080,026.70. This is assuming we get the \$5.1 million and the CELCP monies.

For the approved projects and those for consideration today, staff is being creative in laying out multiple payments and involving funding partners. In some cases private individuals are involved; for others, federal programs are involved.

Two settlements took place since the last meeting: Red Clay Creek SRA, Marshall and Inland Bays SRA, Biffen Company.

IV. Agency and Public Presentations – Matters Arising

- State Resources Areas Update:

Mrs. Williams asked Mr. Phillips to inform Council on the Court of Chancery's final decision.

Mr. Phillips said the Chancery Court filed its final decision on October 10, 2008. It still held that the State Resource Areas maps were void because of how they were created. The standards and criteria need to be devised by the Council in cooperation with the Interagency Working Group first. Then these criteria would be used to create the maps.

Mrs. Williams and Mr. Vickers provided an update on activities related to the State Resource Areas.

Mrs. Williams said in previous Open Space Council meetings there were discussions about the Chancery Court's decision and a path forward for redoing the State Resource Area maps. A Stakeholders Group was formed in lieu of proposed legislation moving forward. The group has met twice with Ed Jestice from the Farm Bureau as the chair. The interests in the meeting are wide ranging with differences put on the table and discussed thoroughly. Issues of concern for the Stakeholders Group include better communication with landowners and an appeals process. The overriding issue is how the maps would be used by the Counties.

In response to the Court decision the Interagency Working Group (IWG) will be called upon to work with the Council to provide standards and criteria for the State Resource Areas. Typically, the IWG meets prior to the Open Space Council meeting to go over acquisition projects and recommend action to the Council. After the Council and IWG devise the standards and criteria, the Stakeholders Group will provide input before presenting the work in a public hearing. After this, they would be adopted by DNREC.

The IWG held a meeting on November 25, 2008 with most of the state and county agencies represented. Lee Ann Walling chaired the meeting. The IWG held a good open discussion regarding process and participation. The major issues were reviewing definitions in the law, comparing each representative's programs with the Land Protection Act for any overlap in policy and practice, and making sure all the right players are involved. It was decided that smaller technical and policy group meetings would be needed during the development of the standards and criteria. The emphasis will be on scientifically based designs that will be clearly understood and defensible. It may take a year to follow all of the steps to create and to adopt the standards and criteria.

After the criteria are adopted, they would be used to produce new SRA maps. The Council, in conjunction with the IWG and with input from the Stakeholders Group, would develop new maps to go to public hearing, followed by adoption by DNREC. This may take another year to complete.

At the September 2008 meeting it was agreed that Council would act as a committee of the whole in reference to working with the Stakeholders Group and the IWG. Mrs. Williams would represent the Council and communicate to all on any action.

The Interagency Working Group consists of people from the following agencies: DNREC, Department of Agriculture, Department of Transportation, Delaware Economic Development Office, Historical and Cultural Affairs and County Planning staffs.

The Stakeholders Group consists of representatives from the Delaware Realtors, the Homebuilders Association, the Positive Growth Alliance, the Farm Bureau, Delaware Nature Society, Delaware Greenways, the Natural Areas Advisory Council, the Open Space Council, each County Planning department, Secretary and staff from DNREC, and Representative George Carey.

- 2008 Delaware Land & Water Conservation Trust Fund (DTF) Projects:
Mrs. Williams began the discussion by asking about the status of proposed legislation that would move the approval process for DTF projects from the Open Space Council to the Parks & Recreation Advisory Council. This was agreed to by the Council at its September 2007 meeting.

Mr. Salkin said Representative Valihura, a member of the Council, drafted legislation to transfer the responsibilities. However, the legislation was entered late in the legislative session and did not get out of committee. It will be put forward again for consideration.

Mr. Ehemann, Parks Grants Coordinator, presented the 2008 DTF project applications. He presented a PowerPoint presentation that explained the background of the program and each submitted project. Each year \$750,000 is available on a matching basis for county, municipal and state entities to spend on park projects involving land acquisition, planning or site development. Applications are screened, ranked and presented to the Council for review and approval.

The 2008 DTF projects are listed below:

2008 DTF Park Applications			DTF
Sponsor	Location	Description	Request
New Castle County	Glasgow Regional Park	Phase II includes features for the concrete skate park.	\$150,000
Smyrna, Kent County	Sunnyside Park	Phase II includes tennis, basketball & horseshoe courts & landscaping	\$45,000
Seaford, Sussex County	Soroptimist Park	Phase III includes playground, pathway, pavilion & landscaping	\$50,000
Lewes, Sussex County	Village Green (Canalfront)	Install a pathway, site grading/seeking, signs & Landscaping	\$150,000

Laurel - Sussex County	Laurel River Park	Install lighting, park benches and tables - 5 acres	\$37,500
Rehoboth, Sussex County	Grove Park	Phase III includes building a ramp to the Lewes-Rehoboth Canal	\$100,000
Newark, New Castle County	Playgrounds	Replace outdated play equipment at 4 city parks	\$18,000
Smyrna, Kent County	Mill Creek Park	Install trails, canoe/kayak launch & fishing pier, playground, fitness stations & pick facilities	\$85,000
Wilmington, New Castle County	Multi playgrounds	Browntown Park, Brown Burton & Winchester Park & Tatnall St. Playground	\$120,000
Houston, Sussex County	Armour Park	Install playground, pavilion, benches & fencing	\$35,000
Milton, Sussex County	Memorial Park	Phase I will include playground, gazebo, benches, lighting, picnic tables, grills, trash receptacles, electric hookups, watering stations & engineering fees	\$150,000
		Total Request	\$718,100
	2008 New & Phased	\$903,100	
	208 Amendments Granted	\$94,750	\$94,750
	Total Demand	997,850	\$812,850
Contingency needed			\$62,850

Mr. Salkin said the staff is working to get the project sponsors to submit applications that reflect real projects that are feasible and ready to go. This is increasingly important in times of tight budgets.

Mrs. Williams asked for questions. There being none, she asked for a motion to approve the 2008 DTF Project applications. Mr. Schroeder abstained from voting since he is on the board of the Greater Lewes Foundation and treasurer of the Lewes Canal Front Park, one of the projects seeking funding. It was moved, seconded and agreed, with one abstention, to approve the DTF projects as presented.

V. Executive Session - Discussion of Site Acquisition Contracts

The Council adjourned to Executive Session at 10:15 a.m. to discuss site acquisition contracts. The Council returned to Open Session at 11:05 a.m.

VI. Project Recommendations

Based on discussions in Executive Session, Council determined the following:

- A. Inland Bays SRA – Holts Landing State Park – Rickards property, +/- 2.46 acres: It was moved, seconded and agreed, based on discussion in Executive Session, to recommend the fee simple purchase of the property at a contract price of \$350,000, pending available funding.
- B. James Branch SRA - Trussum Pond – Durham property, +/- 11.88 acres: It was moved, seconded and agreed, based on discussion in Executive Session, to recommend the fee simple purchase of the property at a contract price of \$420,000, pending available funding.

- C. Inland Bays SRA - Assawoman Canal – Mitchell property, +/- 1.0 acre: It was moved, seconded and agreed, based on discussion in Executive Session, to recommend the fee simple purchase of the property at a contract price of \$775,000, pending available funding.
- D. Red Clay Creek SRA – NVF/CCS/Reynolds project: The Council encouraged staff to continue discussions on protection of these lands.

Mrs. Williams said there were two items for Council's consideration. The first is that if funding is not available for any of the acquisition projects, then staff is encouraged to seek out conservation buyers to step in and preserve the properties. The Council moved, seconded and passed such a motion.

In reference to the current budget situation, Mrs. Williams asked Council members if it would be appropriate for her to respond to the Budget Office emphasizing that now is not the time for budget cuts to the Open Space Program. The Council fully recognizes that the budget situation is difficult, but now is the time to acquire more conservation lands while acquisition costs are lower. The Council moved, seconded and passed a motion to send such a letter to the Budget Office.

VII. Next Meeting and Adjournment

The dates for the 2009 Open Space Council meetings are as follows:

Tuesday, March 10, 2009
Tuesday, June 9, 2009
Tuesday, September 8, 2009
Tuesday, December 8, 2009

All meetings will be at 9:00 a.m. in the Senate Hearing Room in Legislative Hall, Dover.

Mrs. Williams asked for a motion to adjourn the meeting. Motion was made by Mr. Powell and seconded by Mr. Schroeder. The meeting adjourned at 11:15 a.m.

Respectfully submitted: Rose Ryödi